

[4] Taking into account that Mr Hardaker had not, when he left, been paid his entitlement to accrued holiday pay of \$857.85 (nett), LongChill believed Mr Hardaker had received \$27,115.30 over the course of 35 weeks to which he was not entitled to retain.

[5] In a letter dated 6 January 2020 LongChill notified Mr Hardaker of the payroll error and apologised for the mistake. The letter further advised LongChill wished to recover the sum, and was willing to negotiate a payment plan if required.

[6] Another letter dated 27 January 2020 reiterated the contents of the earlier letter, noting that if a repayment plan could not be agreed LongChill would seek mediation. The letter stated it would file an application with the Employment Relations Authority “*as a last resort*”.

The Authority’s investigation process

[7] New Zealand Post Courier Track&Trace documentation records Mr Hardaker received LongChill’s statement of problem (and accompanying documentation) on 17 November 2020.¹

[8] Mr Hardaker had not replied to LongChill’s letters. Nor did he provide a statement in reply in accordance with the Authority’s Regulations², or attend a case management conference call on 24 November 2020.

[9] A Notice of Direction (NOD) was sent by the Authority to Mr Hardaker at the conclusion of the conference call urging him to provide a response to the claim. Dependent on the content of Mr Hardaker’s reply, the NOD provided a range of methods by which the investigation might be undertaken, including a face to face meeting.

[10] The only communication the Authority has received from Mr Hardaker occurred on 2 February 2021 via email. In this correspondence, Mr Hardaker expressed his dissatisfaction with LongChill as an employer, but he did not address (at all) the substance of LongChill’s claim. The Authority replied on 3 February 2021, again seeking Mr Hardaker’s response to LongChill’s claim of overpayment.

[11] By further email on 22 February 2021, the Authority advised that if a response on the issue was not received within 24 hours (or thereabouts) the investigation meeting scheduled for 24 February 2021 would be vacated, and a determination based on the material before the

¹ CourierPost *Track&Trace* documentation.

² Employment Relations Authority Regulations 2000, Regulation 8.

Authority would be made. Mr Hardaker did not communicate with the Authority on any of these matters, but I am satisfied he must have been aware of the claim and the Authority's requests for a response.

[12] Mr Hardaker has not advised of any good cause as to why a statement in reply was not furnished to the Authority on this matter nor why he has not responded to the Authority's various requests.

[13] In the absence of any explanation I must conclude Mr Hardaker has elected not to participate in the Authority's investigation of the matter.

Findings

[14] LongChill lodged a statement, recording the chronology of events and detailing the cause of the overpayment, with the Authority. Copies of the two letters sent to Mr Hardaker in January 2020, as well as payroll information setting out the quantum of each payment, the number of payments made, and the amount of final holiday pay owed were also provided.

[15] From the documentary material provided, I am satisfied:

- (a) Between 2 December 2018 and 21 July 2019 LongChill overpaid Mr Hardaker the nett sum of \$27,115.30.
- (b) The overpayments were a consequence of a genuine administrative error.
- (c) Mr Hardaker was not entitled to the \$27,115.30 he received.
- (d) Mr Hardaker has been unjustly enriched as a result of the error.
- (e) LongChill has taken reasonable steps to resolve the matter with Mr Hardaker directly, but these have not proved successful.
- (f) Mr Hardaker has not repaid the overpayments or entered into arrangements for repayment.
- (g) Mr Hardaker has not furnished any reasons as to why he had not repaid the overpayment or made arrangements to do so.
- (h) Mr Hardaker has not established any basis on which I could fairly conclude it would be unfair to require Mr Hardaker to repay the sum he has mistakenly received.

Orders

[16] Within a month of the date of this determination, Mr Grant Hardaker must pay LongChill Limited the sum of \$27,115.30 as repayment of the sum of money received in overpayments.

Costs

[17] It is not necessary to make an order concerning costs where there is nothing to suggest either party incurred representative costs over the course of the Authority's investigation of this matter.

Michele Ryan
Member of the Employment Relations Authority